

AN ORDINANCE 2006-06-08-0683

APPROVING A TOTAL OF \$4,881,052.00, TO INCLUDE THE SELECTION OF, AND THE NEGOTIATION AND EXECUTION OF A \$4,814,685.00 PROFESSIONAL SERVICES AGREEMENT WITH POST, BUCKLEY, SCHUH AND JERNIGAN, INC. (PBS&J) FOR PROFESSIONAL PROGRAM MANAGEMENT SERVICES, DESIGN SERVICES, PAVEMENT ENGINEERING AND SCOPING AND ESTIMATING SERVICES IN CONNECTION WITH \$29 MILLION IN AUTHORIZED HUD 108 LOAN PROGRAM PROJECTS; AND APPROPRIATING FUNDS.

* * * * *

WHEREAS, the Public Works Department presented to the City Council the need for professional program management services to assist that Department in the completion of numerous capital improvements projects; and

WHEREAS, the Public Works Department desires program management services to assist in the administration of the U.S. Department of Housing and Urban Development (HUD) 108 Loan Program projects (the "Projects"); and

WHEREAS, the Public Works Department released a Request for Qualifications from firms desiring to provide program management services; and

WHEREAS, in connection with said Projects, there exists a need for program management services to include program management and administration, design firm management, design quality assurance and quality control review and coordination, bidding services, and construction oversight; and

WHEREAS, the City staff rated all individuals and firms which submitted interest statements to be considered for the above-described work, giving consideration to past experience and recognized ability and competence in providing such services; and

WHEREAS, the City staff reviewed the ratings and has recommended to the City Council that Post, Buckley, Schuh and Jernigan, Inc. (PBS&J) should be selected for said work, based upon demonstrated ability and qualifications, and that the professional services agreement with PBS & J be accepted; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Post, Buckley, Schuh and Jernigan, Inc. (PBS&J) is hereby selected to provide professional program management services in connection with the U.S. Department of Housing and Urban Development (HUD) 108 Loan Program Projects.

SECTION 2. The City Manager or, in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager or the Director of the Public Works Department is hereby authorized to negotiate the terms of the professional services agreement with Post, Buckley, Schuh and Jernigan, Inc. (PBS&J) for the work described in this Ordinance at a fair and reasonable amount, not to exceed \$4,814,685.00.

SECTION 3. The City Manager, or in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager, or the Director of the Public Works Department is hereby authorized to execute such professional services agreement in substantially the same form as Attachment I, which is incorporated by reference herein, without further action of the City Council. Should an agreement be negotiated which substantially varies from the terms of the attached agreement, the agreement must be subsequently considered by the City Council which must approve its terms and insure that the compensation provided meets the legal requirements as set in V.T.C.A. Government Code, Title 10, Chapter 2254.004, and determine that other provisions are acceptable.

SECTION 4. The appropriation and allocation of HUD 108 Loan Program funds in the amount of \$4,814,685.00 in connection with the HUD 108 Loan Program Projects is hereby approved.

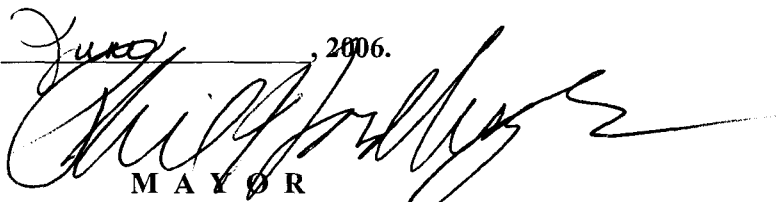
SECTION 5. Fund Number 27040000 entitled "Department HUD 108 Capital Program" and Fund Number 28029000 entitled "CDBG 29th Year" is hereby designated for use in the accounting for the fiscal transaction(s) of this Ordinance.

SECTION 6. The sum of \$4,814,685.00 is hereby appropriated in the above designated fund and will be transferred from Fund Number 27040000, GL Account # 6102100 entitled "Interfund Transfer Out" to Fund Number 28029000 entitled "CDBG 29th Year", GL Account # 6101100 entitled "Interfund Transfers In" and will be allocated as set forth in the Resolution Fiscal Impact Sheets, attached hereto and incorporated herein by reference as Attachment II.

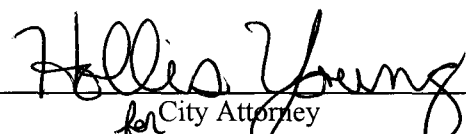
SECTION 7. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, SAP GL Account Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 8. This Ordinance shall become effective on and after the 18th day of June, 2006.

PASSED AND APPROVED this 8th day of June, 2006.


MAYOR
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

ATTACHMENT I

PROFESSIONAL SERVICES AGREEMENT

FOR HUD 108 LOAN & PAVEMENT MANAGEMENT PROJECTS

STATE OF TEXAS

COUNTY OF BEXAR

AGREEMENT FOR PROGRAM MANAGEMENT SERVICES

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as “**CITY**”), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. _____, passed and approved on the _____ day of _____, 200__ and PBS&J, Inc., a Texas Corporation, (hereinafter referred to as “**CONSULTANT**”), both of which may be referred to herein collectively as the “**PARTIES**”.

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **CONSULTANT** do hereby agree as follows:

I. DEFINITIONS

As used in this **AGREEMENT**, the following terms shall have meanings as set out below:

1.1 “Director” means the director of **CITY**’s Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 “Project” means the capital improvement/construction development undertaking of **CITY** for which **CONSULTANT**’s design services, as stated in the Scope of Services, are to be provided pursuant to this **AGREEMENT**.

1.3 “Ab Initio” means from the beginning; from the first act; from the inception. *See Black’s Law Dictionary, 7th Ed., © 1999.*

1.4 “Respondeat Superior” means let the superior answer. This maxim means that a superior is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black’s Law Dictionary, 7th Ed., © 1999.*

II. PERIOD OF SERVICE

This **AGREEMENT** shall take effect on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services.

PM Agreement

III. SCOPE OF SERVICES

3.1 **CONSULTANT** shall not commence work until **CONSULTANT** has been thoroughly briefed on the scope of Project, and has been notified in writing by Director to proceed. The Project scope and **CONSULTANT's** services are outlined in the Scope of Services document, attached hereto as Attachment A. Should the scope subsequently change, either party may request a review of the anticipated services, with an appropriate adjustment in fees; however, such adjustment cannot exceed the maximum allowed under the "not to exceed" amounts of this AGREEMENT.

3.2 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by this Scope of Services.

3.2.1 ATTACHMENT "A" (Scope of Services)

3.2.2 ATTACHMENT "B" – (Consultant's Fee Proposal and SBEDA Participation Statement From Consultant's Interest Statement to the extent that it does not conflict with this Agreement and Attachment A)

IV. COORDINATION WITH THE CITY

4.1 Director shall act on behalf of **CITY** with respect to the work performed under this AGREEMENT. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY's** policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT's** services.

4.2 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT's** services, or performance, or of any development that affects the scope or timing of **CONSULTANT's** services.

4.3 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY's** use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

V. COMPENSATION

5.1 For and in consideration of the services to be rendered by **CONSULTANT**, **CITY** shall pay **CONSULTANT** monthly based upon actual personnel base hourly rates and hours of service provided by the Program Manager and its subconsultants multiplied by fixed overhead and fixed profit multipliers.

5.2 Nothing contained in this AGREEMENT shall require **CITY** to pay for any unsatisfactory

work, as determined by the Director, or for work that is not in compliance with the terms of this AGREEMENT. CITY shall not be required to make any payments to CONSULTANT at any time CONSULTANT is in default under this AGREEMENT.

5.3 BASIS FOR COMPENSATION

A. The total fee for CONSULTANT's work as defined in the Scope of Services shall be in an amount not to exceed **FOUR MILLION, EIGHT HUNDRED FOURTEEN THOUSAND, SIX HUNDRED EIGHT-FIVE DOLLARS (\$4,814,685.00)**, which will be determined as follows:

1. Non-Principal – hourly rate shall be the base salary times a multiplier of 3.15.
2. Principal – hourly rate set forth in 5.5(C) with a stated maximum not to be exceeded.
3. Reimbursement of non-labor expenses.
4. CITY directed subcontract expenses at invoice cost plus a 5% service charge.

B. CONSULTANT may submit invoices for partial payment prior to submittal of review documents as outlined below. CONSULTANT must submit a written progress report detailing work performed for the billing period reflected in the invoice. A partial payment made must be in proportion to the work performed as reflected in the report and approved by Director. Partial payments shall be payable no later than thirty (30) days following acceptance by Director.

- (1) CONSTRUCTION PHASE SERVICES: Reimbursement will be on an hourly basis. CONSULTANT shall be payable by CITY in monthly installments in accordance with the percentage of construction completed as determined by Director in his sole discretion.
- (2) PROMPT PAYMENT: CONSULTANT shall pay each subconsultant or subcontractor (collectively "SUBCONSULTANT") under this AGREEMENT for satisfactory performance of its contract no later than 15 days from the receipt of each payment by CITY to CONSULTANT. CONSULTANT further agrees to return retainage payments to each SUBCONSULTANT within 15 days after the SUBCONSULTANT's work is satisfactorily completed. Any delay or postponement of payment may occur only for good cause following written approval of the CITY. This clause applies to both DBE and non-DBE subcontractors.

5.4 MODIFICATIONS

CONSULTANT and CITY acknowledge the fact that the base fee as determined in section 5.3(A) above has been established predicated upon the total estimated costs of services to be rendered under the AGREEMENT. For additional services, compensation shall be subject to renegotiations in accordance with section 5.5 below.

5.5 COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

CONSULTANT may be required to perform additional services, subject to appropriations having

been made therefore, in connection with this AGREEMENT. Should **CONSULTANT** be directed in writing by Director to perform these services, compensation shall be paid by **CITY** to **CONSULTANT** as authorized in writing by Director, as follows:

A. The basis for compensation for services may be in one or more of the following forms:

- (1) Rate for testimony of principals to be negotiated.
- (2) Non-Principal - Salary cost times a multiplier of 3.1 with a stated maximum not to be exceeded.
- (3) Principal – hourly rate set forth in 5.5(C) herein with a stated maximum not to be exceeded.
- (4) Reimbursement of non-labor expenses and **CITY** directed subcontract expenses at invoice cost plus a 15% service charge.
- (5) Lump sum per item of work to be negotiated.
- (6) Lump sum to be negotiated.

B. Salary Cost - Salary cost is defined as the cost of salaries of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc. for time directly chargeable to the Project.

C. Principals of the Consulting Firm - For the purpose of this provision, the Principals of the Consulting Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

<u>Principal Name</u>	<u>Hourly Charge</u>
<u>John L. German</u>	\$ _____/hour

VI. OWNERSHIP OF DOCUMENTS

6.1 **CONSULTANT** acknowledges and agrees that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this AGREEMENT and shall be used as **CITY** desires and shall be delivered to **CITY** at no additional cost to **CITY** upon request or completion or termination of this AGREEMENT without restriction on future use.

6.2 **CONSULTANT** agrees and covenants to protect any and all proprietary rights of **CITY** in any materials provided to **CONSULTANT**. Such protection of proprietary rights by **CONSULTANT** shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to **CITY**. Additionally, any materials provided to **CONSULTANT** by **CITY** shall not be released to any third party without the consent of **CITY** and shall be returned intact to **CITY** upon completion or termination of this AGREEMENT.

6.3 **CONSULTANT** hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this AGREEMENT to **CITY**, including all moral rights. No reports, maps, documents or other copyrightable works produced in whole or in part by this AGREEMENT shall be subject of an application for copyright by

CONSULTANT. All reports, maps, project logos, drawings or other copyrightable work produced under this AGREEMENT shall become the property of **CITY** (excluding any instrument of services, unless otherwise specified herein). **CONSULTANT** shall, at its expense, defend all suits or proceedings instituted against **CITY** and pay any award of damages or loss resulting from an injunction, against **CITY**, insofar as the same are based on any claim that materials or work provided under this **AGREEMENT** constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

6.4 **CONSULTANT** may make copies of any and all documents and items for its files. **CONSULTANT** shall have no liability for changes made to or use of the drawings, specifications and other documents by other engineers, or other persons, subsequent to the completion of the Project. **CITY** shall require that any such change or other use shall be appropriately marked to reflect what was changed or modified.

6.5 Copies of documents that may be relied upon by **CITY** are limited to the printed copies (also known as hard copies) that are sealed and signed by **CONSULTANT**. Files in electronic media format of text, data, graphics, or other types that are furnished by **CONSULTANT** to **CITY** are only for convenience of **CITY**. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

VII. TERMINATION AND/OR SUSPENSION OF WORK

7.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause.

7.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article XVI, Notice. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

7.2.2 This AGREEMENT may be terminated by **CITY** prior to Director giving **CONSULTANT** written notice to proceed pursuant to Article III, Section 3.1, should Director, at his sole discretion, determine that it is not in **CITY's** best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article XVI, Notice and shall be effective upon delivery by **CITY** in accordance with Article XVI.

7.2.3 **CITY** shall equitably compensate **CONSULTANT** in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by **CITY**. **CONSULTANT** shall not, however, be entitled to lost or anticipated profits should **CITY** choose to exercise its option to terminate.

7.3 Defaults With Opportunity for Cure.

Should **CONSULTANT** fail to provide the required documents required by Article III, Scope of Services by the due dates establish, in acceptable form, as indicated in said Scope of Services as approved by Director, same shall be considered a default. However, Parties agree that no default shall be considered to occur where **CONSULTANT**'s failure to provide the documents is directly caused by the actions of **CITY**. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **CONSULTANT** shall have ten (10) days after receipt of the written notice, in accordance with Article XVI, Notice, to cure such default. If **CONSULTANT** fails to cure the default within such ten-day cure period, **CITY** shall have the right, without further notice, to terminate this AGREEMENT in whole or in part as **CITY** deems appropriate, and to CONTRACT with another **CONSULTANT** to complete the work required in this AGREEMENT. **CITY** shall also have the right to offset the cost of said new CONTRACT with a new consultant against **CONSULTANT**'s future or unpaid invoice(s), subject to the duty on the part of **CITY** to mitigate its losses to the extent required by law.

7.4 **Termination For Cause.** Upon written notice, **CITY** may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Termination for Cause under this AGREEMENT:

- 7.4.1 **CONSULTANT** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, **CONSULTANT**'s Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or
- 7.4.2 **CONSULTANT** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT, except those events of default for which an opportunity to cure is provided herein; however, if such default as provided in Section 7.3, Defaults with Opportunity for Cure, exceeds the following, same shall be considered an Event for Cause, subject to the remedies as provided herein:
 - (A) **CONSULTANT** fails to cure a default listed in Section 7.3 within the time period required for cure; or
 - (B) **CONSULTANT** is in default as provided in Section 7.3 on more than one occasion in any consecutive twelve (12) month period.
- 7.4.3 **CONSULTANT** attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or
- 7.4.4 **CONSULTANT** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of

such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT's** assets or properties; or

7.4.5 **CONSULTANT** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or

7.4.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT or violates the provisions of Attachment D incorporated herein for all purposes.

7.5 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.

7.6 **Effect of Termination.** Notwithstanding Section 7.3, Defaults with Opportunity for Cure, upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article XVI, Notice.

7.6.1 Regardless of how this AGREEMENT is terminated, and subject to 7.6.2, **CONSULTANT** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed specifications and reproducibles of all completed or partially completed designs and plans prepared pursuant to this AGREEMENT, documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**, hereunder in accordance with Article VI, Ownership of Documents. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at **CONSULTANT's** sole cost and expense. Payment of compensation due or to become due to **CONSULTANT** is conditioned upon delivery of all such documents.

7.6.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, **CONSULTANT** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this AGREEMENT through the effective date of termination. Failure by **CONSULTANT** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a **Waiver** by **CONSULTANT** of any and all right or claims to collect moneys that **CONSULTANT** may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.

7.6.3 Upon the effective date of expiration or termination of this AGREEMENT, **CONSULTANT** shall cease all operations of work being performed by **CONSULTANT** or any of its subconsultants pursuant to this AGREEMENT.

- 7.6.4 **Termination not sole remedy.** In no event shall **CITY's** action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of **CITY's** remedies, nor shall such termination limit, in any way, at law or at equity, **CITY's** right to seek damages from or otherwise pursue **CONSULTANT** for any default hereunder or other action.
- 7.7 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.
- 7.7.1 **CITY** may suspend this AGREEMENT at the end of any phase for the convenience of **CITY** by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article XVI, Notice, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT's** receipt of said notice.
- 7.7.2 **CONSULTANT** may terminate this AGREEMENT in the event such suspension exceeds one hundred twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article XVI, Notice, (citing this paragraph) to **CITY** after the expiration of one hundred twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.
- 7.8 Procedures for **CONSULTANT** to follow upon Receipt of Notice of Suspension.
- 7.8.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this AGREEMENT and cancel all existing orders and contracts.
- 7.8.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension.
- 7.8.3 All completed or partially completed designs, plans and specifications prepared under this AGREEMENT prior to the effective date of suspension shall be prepared for possible delivery to **CITY** but shall be retained by **CONSULTANT** until such time as **CONSULTANT** may exercise the right to terminate.
- 7.8.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT's** notice of termination, **CONSULTANT** shall submit the above referenced statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension. Nothing in this Section 7.8.4

shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

- 7.8.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT**'s notice of termination.
- 7.8.6 Upon the above conditions being met, **CITY** shall pay **CONSULTANT** that proportion of the prescribed fee which the services actually performed under this AGREEMENT bear to the total services called for under this AGREEMENT, less previous payments of the fee.
- 7.8.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **CITY**. To this end, **CONSULTANT** understands that failure of **CONSULTANT** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

VIII. INSURANCE REQUIREMENTS

8.1 Prior to the commencement of any work under this AGREEMENT, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY**'s Public Works Department and **CITY**'s Risk Management Division, and shall be clearly labeled "**PROGRAM MANAGEMENT SERVICES FOR HUD 108 LOAN AND PAVEMENT MANAGEMENT PROJECTS**", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY**'s Public Works Department and **CITY**'s Risk Management Office, and no officer or employee shall have authority to waive this requirement.

8.2 **CONSULTANT**'s financial integrity is of interest to **CITY**, therefore, subject to **CONSULTANT**'s right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **CONSULTANT** shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at **CONSULTANT**'s sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- (vii) or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000

3. Commercial General (public) Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises/Operations b. Independent Consultants <ul style="list-style-type: none"> i. Products/completed operations ii. Personal Injury iii. Contractual liability 	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability <ul style="list-style-type: none"> a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles 	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$7,914,685.00 per claim to pay on behalf of the insured all sums, which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

8.3 **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by **CITY**. **CONSULTANT** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided in Article VIII herein within 10 days of the requested change.

8.4 **CONSULTANT** agrees that with respect to the above required insurance; all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name **CITY** and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

8.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by **CITY**, **CONSULTANT** shall notify **CITY** of such and shall give such notices not less than thirty (30) days prior to the change, if **CONSULTANT** knows of said change in advance, or ten (10) days notice after the change, if the **CONSULTANT** did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied

by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio
Public Works Department – Capital Programs
P.O. Box 83996
San Antonio, Texas 78283-3966

8.6 If **CONSULTANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by **CITY** is an alternative to other remedies **CITY** may have, and is not the exclusive remedy for failure of **CONSULTANT** to maintain said insurance or secure such endorsement. In addition to any other remedies **CITY** may have upon **CONSULTANT**'s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, **CITY** shall have the right to order **CONSULTANT** to stop work hereunder, and/or withhold any payment(s) which become due to **CONSULTANT** hereunder until **CONSULTANT** demonstrates compliance with the requirements hereof. A stop work order given to **CONSULTANT** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VII, Section 7.7.

8.7 Nothing herein contained shall be construed as limiting in any way the extent to which **CONSULTANT** may be held responsible for payments of damages to persons or property resulting from **CONSULTANT**'s or its subconsultants' performance of the work covered under this AGREEMENT.

8.8 It is agreed that **CONSULTANT**'s insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this AGREEMENT.

IX. INDEMNIFICATION

9.1 **CONSULTANT**, whose work product is the subject of this AGREEMENT for Program Management services, agrees to **INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS** against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES** while in the exercise of performance of the rights

or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

9.2 Pursuant to Section 271.904 of the Texas Local Government Code, or its successor provision, CONSULTANT whose work product is the subject of this AGREEMENT for Program Management Services, EXPRESSLY AGREES to INDEMNIFY AND HOLD CITY, ITS AGENTS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, for the personal injury, death, or property injury of CONSULTANT, the employees of CONSULTANT, or third parties for which recovery of damages is sought that may arise which are caused by the NEGLIGENCE act of the CONSULTANT, AGENTS, or EMPLOYEES while in the exercise and/or performance of the rights or duties under this Contract.

9.3 It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in section 9.2, is an INDEMNITY extended by CONSULTANT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY, ITS AGENTS AND EMPLOYEES from the consequences of the NEGLIGENCE of the CONSULTANT, ITS AGENTS OR EMPLOYEES in instances where such NEGLIGENCE causes personal injury death or property injury to CONSULTANT, employees of CONSULTANT or third parties; or any other expense that arises from personal injury, death, or property injury to CONSULTANT, employees of CONSULTANT or third parties. CONSULTANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY in connection with any such injury, death or property injury for which this INDEMNITY shall apply, as set forth above.

9.4 CONSULTANT shall promptly advise the CITY, in writing within twenty four (24) hours, of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this contract.

9.5 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

X. LICENSING

CONSULTANT shall utilize qualified personnel to complete the work to be performed under this AGREEMENT, and all work performed under this AGREEMENT is to be executed under the direct supervision of a licensed professional engineer as required by state law. Persons retained to

perform work pursuant to this AGREEMENT shall be the employees or subconsultants of **CONSULTANT**. **CONSULTANT** or its subconsultants shall perform all necessary work.

XI. ASSIGNMENT OF RIGHTS OR DUTIES

11.1 By entering into this AGREEMENT, **CITY** has approved the use of any subconsultants identified in **CONSULTANT's** Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subconsultants as are identified in **CONSULTANT's** Interest Statement.

11.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**. Actual engineering services, those required by law to be performed by a licensed engineer, or services to be performed which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this AGREEMENT may be subcontracted upon the written approval of Director.

11.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subconsultant. Any references in this AGREEMENT to an assignee, transferee, or subconsultant, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

11.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VIII, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

11.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VII, Termination.

XII. INDEPENDENT CONSULTANT

12.1 **CONSULTANT** covenants and agrees that (s)he is an independent **CONSULTANT** and not an officer, agent, servant, or employee of **CITY**; that **CONSULTANT** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

12.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **CONSULTANT** or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

XIII. EQUAL EMPLOYMENT OPPORTUNITY

13.1 **CONSULTANT** shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City Ordinance Number 69403 on file in the City Clerk's office.

XIV. SBEDA REQUIREMENTS

14.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

14.2 **CONSULTANT** agrees to implement the plan submitted in **CONSULTANT**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this AGREEMENT, thereby meeting the percentages for participation of those groups as submitted therein. **CONSULTANT** agrees to be in full compliance with this article by meeting the percentages listed in **CONSULTANT**'s Interest Statement no later than 60 days from the date of execution of this AGREEMENT, and to remain in compliance throughout the term of this AGREEMENT. **CONSULTANT** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, that will meet the

percentages submitted in **CONSULTANT's** Interest Statement. Changes in contract value by changes in work orders, **AGREEMENT** amendments, or use of contract alternatives, which result in an increase in the value of the **AGREEMENT** by 10% or greater require the **CONSULTANT** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **CONSULTANT's** Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

14.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/WBE's. **CONSULTANT** shall submit annual reports to **CITY's** Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/WBE participation in the **AGREEMENT**. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **CONSULTANT** is not in compliance with this article, **CITY** shall give notice of non-compliance to **CONSULTANT**. **CONSULTANT** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this **AGREEMENT** and may subject **CONSULTANT** to any of the penalties listed in **CITY** of San Antonio Ordinance No. 77758, at **CITY's** option. Further, such failure may be considered a default for which **CITY** may terminate this **AGREEMENT** in accordance with Article VIII, Termination.

14.4 **CONSULTANT** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

14.5 In all events, **CONSULTANT** shall comply with the **CITY's** Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

14.6 It is **CITY's** understanding, and this **AGREEMENT** is made in reliance thereon, that **CONSULTANT**, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to **CITY's** Request for Interest Statement.

14.7 Any work or services subcontracted by **CONSULTANT** shall be by written contract, and unless specific waiver is granted in writing by **CITY**, shall be subject by its terms to each and every provision of this **AGREEMENT**. Compliance by subcontractor with the provisions of said contract shall be the responsibility of **CONSULTANT**.

14.8 **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONSULTANT**, for performance or services or payment of fees.

XV. ESTIMATES OF COST

Because **CONSULTANT** has no control over the cost of construction labor, materials or equipment or over the construction contractor's methods of determining prices, or over competitive bidding or market conditions, **CONSULTANT's** opinions of probable construction cost provided herein shall be made on the basis of **CONSULTANT's** experience and qualifications and represent

CONSULTANT's best judgment as a design professional familiar with the construction industry. **CONSULTANT** cannot and does not guarantee that proposals, bids or the construction cost will not vary from opinions of probable cost prepared by **CONSULTANT**.

XVI. NOTICES

Unless otherwise expressly provided elsewhere in this AGREEMENT, any election, notice or communication required or permitted to be given under this AGREEMENT shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
Public Works Department - Capital Programs
Attn: Robert Hill, P.E.
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONSULTANT, to:

PBS&J.
8626 Tesoro Drive, Suite 804
San Antonio, Texas 78217
210-828-9494

XVII. INTEREST IN CITY CONTRACTS PROHIBITED

17.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

17.2 **CONSULTANT** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY's** Ethics Code.

XVIII. SOLICITATION

CONSULTANT warrants and represents that he has not employed or retained any company or

person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this AGREEMENT, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

XIX. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this AGREEMENT. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this AGREEMENT.

XX. FAMILIARITY WITH LAW AND CONTRACT TERMS

CONSULTANT represents that, prior to signing this AGREEMENT, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this AGREEMENT, all applicable laws, and all of the terms and conditions of this AGREEMENT.

XXI. APPLICABLE LAW

This AGREEMENT shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXII. VENUE

The obligations of the parties to this AGREEMENT shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XXIII. SEVERABILITY

If any clause or provision of this AGREEMENT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or Ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the PARTIES hereto that such invalidity, illegality or unenforceability shall not affect any other invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the PARTIES hereto that in lieu of each clause or provision of this AGREEMENT that is invalid, illegal, or unenforceable, there be added as a part of the AGREEMENT s clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIV. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party

hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXV. SUCCESSORS

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

XXVI. NON-WAIVER OF PERFORMANCE

26.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

26.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXVII. PARAGRAPH HEADINGS

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXVIII. LEGAL AUTHORITY

The signer of this AGREEMENT for CITY and CONSULTANT each represents, warrants, assures and guarantees that he has full legal authority to execute this AGREEMENT on behalf of CITY and CONSULTANT respectively, and to bind CITY and CONSULTANT to all of the terms, conditions, provisions and obligations herein contained.

XXIX. INCORPORATION OF ATTACHMENTS

CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

PM Agreement

ATTACHMENT "A" – (Scope of Services)

ATTACHMENT "B" – (Consultant's Fee Proposal and SBEDA Participation Statement
From Consultant's Interest Statement to the extent that it does not
conflict with this Agreement and Attachment A)

In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail.

XXX. ENTIRE AGREEMENT

30.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXVIII, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

30.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE _____ DAY OF _____, _____.

CITY:

CONSULTANT:

CITY OF SAN ANTONIO

PBS&J

CITY MANAGER

JOHN L. GERMAN, P.E.,
VICE PRESIDENT/DISTRICT DIRECTOR

APPROVED AS TO FORM:

CITY ATTORNEY

PM Agreement

ATTACHMENT A

CITY OF SAN ANTONIO, TEXAS

PROGRAM MANAGEMENT SERVICES

Scope of Services

PART ONE – SERVICES TO BE PROVIDED BY THE CITY

CITY will furnish or make available to CONSULTANT the following items:

1. Provide previous reports and documents related to the project along with all criteria and full information as to requirements for each Project (baseline information), including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards that will be required to be included in the Drawings and Specifications; and furnish copies of standard forms, conditions, and related documents to include in the Bidding Documents, when applicable.
2. Advertise, host, and document any public hearing or meetings for Social, Economic and Environmental and Public Involvement.
3. Provide verified horizontal control points on the State Plane coordinate system if available.
4. Mapping and information on-existing CITY Rights of Way, in CADD format when available.
5. Available and applicable special specifications, special provisions, and updated list of bid items applicable.
6. Any negotiated AGREEMENTS with utility entities for required utility relocation.
7. Assistance in obtaining any required data and information from other local, regional, State and Federal agencies, as necessary.
8. The CITY will obtain a Right of Entry for the CONSULTANT which will allow CONSULTANT the right to enter the subject property, allow excavation of test pits, and other work as necessary to perform their services.
9. The CITY will be responsible for preparation, submission, and cost of the bid advertisement.
10. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by CONSULTANT (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as CITY deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
11. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of CITY, prior to their incorporation into the Work with appropriate professional interpretation thereof.
12. Provide construction inspection services as CITY determines necessary to verify that the Contractor is complying with the Contract Documents and any applicable Laws and Regulations.

13. Provide web based program management training.

PART TWO – SERVICES TO BE PROVIDED BY THE CONSULTANT

A. GENERAL

The work to be performed by CONSULTANT under this AGREEMENT shall consist of providing a broad range of professional and/or project management services necessary to accomplish various tasks related to planning, development, analysis, and design of projects for the CITY. This work will include, but not be limited to:

B. SCOPE OF SERVICES

Program Management related services for HUD 108 Loan Program:

1. Program Management and Administration

- a. Confirmation of CITY Project goals and objectives
- b. Plan scope of Project activities
- c. Identify or develop Project design criteria, goals, and standards
- d. Identification of key participants (Program Manager personnel, sub consultants, CITY personnel)
- e. Collect baseline information for all Program projects/facilities
- f. Identify specific project/facility needs
- g. Establish and monitor project schedules, report to CITY on program and project progress
- h. Charter the Program Team
- i. Attend/Conduct Project meetings as required
- j. Manage SBEDA Program Requirements
- k. Report project status, task budgets, and invoicing on Web based Program site portal to be developed by others

2. Design Management / Plan Updates

- a. Oversight for the preparation or updates of Plans, Specifications and Estimates (PS&E) for various projects/facilities in the Program (Refer to attachment B)
- b. Provide planning and design services for Specific Projects
- c. Provision of design services by Program Manager, CITY staff, Program Subcontractors, or other consultants under direct contract to CITY

- d. Design and constructability reviews
- e. Provide Coordination of Design Firms
- f. Utility coordination oversight, as needed
- g. Provide right-of-way coordination
- h. Review Monthly Reports
- i. Timely Permitting
- j. Establish Quality Control Programs
- k. Monitor Quality Control Programs

3. Bidding Services

- a. Prepare contracts, assemble bid packages
- b. Disseminate Requests for Information from Bidders
- c. Conduct Pre-Bid Conference
- d. Assist with Addendum Preparation
- e. Review Bids and Recommend Award

4. Construction Administration

- a. Administer Construction Contracts
- b. Establish and monitor project construction schedules, report to CITY on program and project progress
- c. Attend pre-construction conferences, construction progress, substantial completion and final payment inspections and other construction job-related meetings as needed.
- d. Provide construction, program, and project coordination
- e. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability reviews requested by CITY; and performing or furnishing services required to revise studies, reports, drawings, specifications, or other bidding documents as a result of such review processes.
- f. Furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist City in observing progress and quality of the Work if needed. The RPR, assistants, and other field staff may provide full-time representation or may provide representation to a lesser degree

(All HUD 108 Loan Program Management services listed above are to be provided as needed and will be paid on an hourly basis.)

Program Management related services for Pavement Management:

1. Program Management and Administration

- a. Confirmation of CITY Program goals and objectives
- b. Plan scope of Program activities
- c. Identify or develop Program design criteria, goals, and standards
- d. Identification of key participants (Program Manager personnel, sub consultants, CITY personnel)
- e. Assist the CITY and its contractors/consultants in collecting pavement condition data and determining the need for short term rehabilitation or reconstruction of all those street sections that meet the City's established criteria
- f. Use geographic information systems to assist in site identification and in the packaging and display of selected projects organized by City Council Districts
- g. Identify specific project/facility needs and financial resources available, and develop five year Pavement Management CIP including projected projects by City Council District during that period
- h. Establish and monitor project schedules, report to CITY on program and project progress
- i. Charter the Program Team
- j. Attend/Conduct Project meetings as needed
- k. Manage SBEDA Program Requirements
- l. Report project status, task budgets, and invoicing on Web based Program site portal to be developed by others

2. Design Management

- a. Oversight for the preparation or updates of Plans, Specifications and Estimates (PS&E) for various projects/facilities in the Program
- b. Augment Pavement Management Engineering Staff
- c. Utility coordination oversight, as needed
- d. Establish Quality Control Programs
- e. Monitor Quality Control Programs

3. Bidding Services

- a. Prepare contracts, assemble bid packages
- b. Disseminate Requests for Information from Bidders
- c. Conduct Pre-Bid Conference
- d. Assist with Addendum Preparation
- e. Review Bids and Recommend Award

4. Construction Administration

- a. Administer Construction Contracts
- b. Establish and monitor project construction schedules, report to CITY on program and project progress
- c. Attend pre-construction conferences, construction progress, substantial completion and final payment inspections and other construction job-related meetings as needed.
- d. Provide construction, program, and project coordination
- e. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability reviews requested by CITY; and performing or furnishing services required to revise studies, reports, drawings, specifications, or other bidding documents as a result of such review processes.
- f. Furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist City in observing progress and quality of the Work if needed. The RPR, assistants, and other field staff may provide full-time representation or may provide representation to a lesser degree

(All Pavement Management Program Management services listed above are to be provided as needed and will be paid on an hourly basis.)

General Capital Improvement Project (CIP) Tasks:

The engineer will provide the following design services which include, but not be limited to:

- 1. Contract Document Review
- 2. Cost Estimating Procedures Review
- 3. Guidance Document Review
- 4. Value Engineering
- 5. Technology transfers
- 6. Material Procurement
- 7. Project Scoping and estimating
- 8. Capital Budgeting

9. CIP Development
10. Project Scheduling

(All General Capital Improvement Program Management services listed above are to be provided as needed and will be paid on an hourly basis.)

Design related services for Program projects:

1. **The engineer will provide the following design services which include, but not be limited to:**
 - a. Roadway
 - b. Traffic Control
 - c. Traffic Operations
 - d. Signing and Striping
 - e. Drainage
 - f. Structures
2. **Assist the City with other design services as needed.**

The design scope of services will include the following:

The Preliminary Phase:

1. Phase "A"

- a. Meet with CITY officials to determine the scope of the proposed projects.
- b. Contact the CITY Right-of-Way Division if any easements, fee right-of-way, or fee title land acquisition is to be involved in the project. Confer with CITY's Right of Way division on possible alternate routes or sites, if any, that may result in cost savings. CONSULTANT shall advise CITY on Right-of-Way and land cost alternatives as weighed against any increased construction costs entailed as a part of this phase.
- c. Make personal contact with each of the Utility Company Coordinators whose utility services may be affected by this Project and request the most current records showing the location of facilities. CONSULTANT shall identify particular problems and conflicts arising from such facilities affecting the Project and shall make recommendations with respect thereto. In accordance with an Agreement existing between CITY and City Public Service, documents will be furnished by the City Public Service Utility Coordinator at no cost to CONSULTANT upon request by CONSULTANT and CONSULTANT shall attach a copy of documentation to the Preliminary Phase "A" Report. CITY will assist CONSULTANT in obtaining data and services requested from the Utility Companies by CONSULTANT after diligent effort has been made by CONSULTANT to no avail.

- d. Perform any field surveys, required to establish existing right-of-way or easement boundaries (but not right-of-way acquisition surveys), and, where necessary, site topography required to collect information needed in the design of the Project, establishing or locating at least two bench marks set to U.S. Coast and Geodetic Survey Datum within the job site in accordance with sound engineering practices. Detailed measurements and surveys for exploration for utilities, if required, will be additional services.
- e. Meet with CITY's Drainage Engineer to review existing preliminary drainage studies that include the project area with consideration for the relative location of the project within the watershed as well as upstream and downstream drainage facilities. Study the existing drainage conditions for the project. Determine drainage area impacting the project limits, and prepare preliminary calculation of drainage flows within the project limits. Review, study and report adequacy of existing drainage systems and drainage design alternatives for the project including street drainage, storm sewer system, detention and/or combinations thereof. Provide schematic presentation of proposed design solutions to address all drainage issues within the project limits and associated upstream and downstream of the project. Include these solutions in the Phase "A" report for determining project feasibility.
- f. Develop a program for the project including schematic layouts and drawing in sufficient detail to determine Project feasibility and give opinions of probable construction costs of the various components or portions of the Project. Include a statement addressing any anticipated right-of-way needs. After determining that sufficient data and information has been compiled, and to the extent that a recommendation can be made, prepare a report of findings and recommendations and furnish CITY with fourteen (14) copies of said report. Upon review of said report and after approval of same, CITY will furnish to CONSULTANT, in writing, authority to proceed with the completion of Preliminary Phase "B".

2. Phase "B"

- a. Prepare a preliminary plan and supporting documents of the proposed project, including plan and profile, in sufficient detail to indicate clearly the problems involved, including trees of 6" caliper or greater, if tree survey has been authorized as an additional service, and approximate locations of the existing utilities within the project site or right-of-way, and anticipate the design, if appropriate, of solutions to minimize conflicts.
- b. Prepare a complete hydrologic and hydraulic design report for the drainage system. This report must include computer models and hydraulic and energy lines plotted on a set of drawing profiles, if applicable.
- c. Show on the preliminary plan existing topographical features and improvements within and outside the right-of-way, necessary for the design of the project. Show any fence or structural encroachments; identify whether or not removal is necessary for construction and/or utility relocation, and show house numbers of each residence on the plans.
- d. When applicable, show adequate existing property lines elevations, proposed top of curb elevations, proposed top of channel elevations and all adequate proposed flow line elevations on the profiles.

- e. Under separate cover, submit one set of pavement design calculations to support the proposed roadway design. Plot and submit the energy grade lines and hydraulic grade lines on one set of prints for review by CITY's Drainage Engineer.
- f. Where applicable, under separate cover, provide supporting documents for design of corrugated pipe to support the proposed design loads.
- g. When both drainage and street reconstruction are included in the project, show the proposed drainage facilities and street improvements on the same plan and profile sheets with the proposed or existing sanitary sewer inverts shown in dashed lines on the profile. Proposed sanitary sewers must be shown on separate plan and profile sheets including proposed top of curb elevations, channel flow lines elevation, drainage crossings, wherever applicable, and storm sewers dashed double line thereon.
- h. Where no drainage improvements are required, show the street and sanitary improvements on the same plan and profile sheets.
- i. Unless directed otherwise by Director, the CONTRACT drawings shall include, but not be limited to, plan and profile sheets with the plan portion at a scale of 1" = 20' - 0" horizontally and 1" = 5' - 0" vertically. All drawings shall be submitted on standard 22" by 34" sheets, untrimmed, trim line to trim line.
- j. Furnish an opinion of probable construction cost based on the plan and supporting documents of the proposed construction, excluding land costs. The opinion of probable construction cost will be based on the latest unit prices provided by CITY for similar work, and when approved by CITY, include adjustments to reflect the level of complexity of constructing the project.
- k. Plan and coordinate Consultant services for foundation investigations, soil borings, and other tests required for design of the project. Furnish locations and elevations of the borings.
- l. Furnish CITY with fourteen (14) copies of the Preliminary Phase plans and supporting documents including any and all of those mentioned immediately above. Upon review of said plan and supporting documents and after approval of same, CITY may furnish to CONSULTANT, in writing, approval of such plan, opinion of probable construction cost and authority to proceed with the Design Phase of the Project.

Design Phase:

- 1. Attend not more than three (3) citizen meetings, and, as deemed necessary by Director in his sole discretion, meet with City officials.
- 2. Furnish data required by CITY for the development of any applications or supporting documents for State or Federal Government permits, grants, or planning advances, provided that such data shall not extend beyond that actually developed in the performance of other provisions of this CONTRACT.
- 3. Conduct preliminary investigation of the need for a 404 Permit. As additional service, if necessary, assist CITY by preparing documents as required.

4. Prepare documentation and application forms for the obtaining of highway permits and railroad agreements, and furnish to CITY. Include approved permits or forms and agreements in specifications.
5. Perform additional field surveys, including, but not limited to one-time staking of design center-line control at each intersection and points of inflection, but not right-of-way acquisition surveys. Site topography required to collect information needed in the design of the Project.
6. Prepare detailed contract drawing, specifications, instruction to bidders, general provisions, proposal and other documents necessary for CITY to advertise for bids for construction, all based on guides furnished CONSULTANT by CITY after authorization has been received from Director to proceed with the final plans.
 - a. Street and drainage cross sections shall be included for every fifty foot station (plus any intermediate stations if field conditions so dictate) at a scale of 1" = 10' - 0" horizontally and 1" = 5' - 0" vertically unless otherwise directed by Director. These designs shall combine the application of sound engineering principles with a high degree of economy. Design standards of other agencies, when approved by CITY shall be used when so directed by Director.
 - b. Detailed specifications shall be developed using CITY's standard Specifications for Public works Construction, and other necessary special specifications.
7. Provide fifteen (15) sets of final plans to CITY's Engineering Division of the Public Works Department for review and comments. If the plans as submitted by CONSULTANT for final review are deemed by Director to be incomplete, CONSULTANT shall make the corrections as specified and resubmit fifteen (15) sets of revised sheets only for this review. CONSULTANT shall bear the expense of the additional fifteen (15) sets of revised sheets required for this review.

Bid Phase:

1. A sample copy of standard general provisions, instructions to bidders, and applicable prevailing wage rates will be furnished to CONSULTANT by CITY for incorporation in the specifications for the proposed project.
2. Prepare and provide one complete set of the bid package, including plans, specifications, instructions to bidders, general provisions, proposal, cost estimates, and other documents necessary for CITY to advertise for bids for construction, all based on guides furnished to CONSULTANT by CITY after authorization has been received from Director to proceed with the final plans. The cost estimate shall include Public Works costs, SAWS Water and Sanitary Sewer costs, and CPS costs, if applicable.
3. Furnish not more than twenty (20) sets of bidding documents, including those specified in this paragraph.
 - a. Upon notification by CITY, CONSULTANT shall provide and submit, prior to a bid opening, ten (10) sets of plans and specifications to CITY's Plans and Records Section, Engineering Division, Public Works Department.
 - b. After the bid opening, CONSULTANT shall provide all remaining sets of plans and specifications to CITY's Capital Programs Division office, Public Works Department.

4. In consultation with CITY, set a charge for plans and specifications (bid documents) based on the cost of printing, materials and handling, said charge to be assessed all bidders and vendors.

Upon the direction, of CITY, issue Plans and Specifications for bidding purposes, receive and record plan depositions, issue and deliver all addenda required to perfect the bid documents, maintain a record of issuance and receipt of same. Attend the Pre-Bid Conference as scheduled by CITY to provide clarification and interpretation to bidders.

5. Attend the formal opening of bids by CITY's Clerk and tabulate and furnish to CITY an original and five (5) copies of the bid tabulation together with written recommendation regarding the award of the contract.

Construction Phase:

1. Attend a Pre-Construction conference with the representative of the interested CITY Department and the Contractor.
2. Make periodic visits, no less than twice a month, to the Project site to observe, as an experienced and qualified design professional, the progress and quality of the executed work, and to determine in general, if the work is proceeding in accordance with the plans and specifications. During such visits and on the basis of on-site observations, consult and advise CITY during construction, and submit monthly reports to CITY relating to such visits, indicating progress of construction. CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. CONSULTANT shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the contractor or the safety precautions and programs incident to the work of the contractor. CONSULTANT shall provide CONSULTANT's best judgment in providing advice to CITY so that the completed project will conform to the plans and specifications. CONSULTANT shall not be responsible for the failure of the contractor to perform the construction work in accordance with plans and specifications and the contractor's contract; however, CONSULTANT shall report to CITY any deficiencies in the work actually detected by CONSULTANT. If more than six visits are required in any month, CONSULTANT may request additional compensation.
3. After Contractor's approval, CONSULTANT shall review and take appropriate action (approve with modifications, reject, etc.) on the Contractor's submittals, such as Shop Drawings, Product Data and samples, but only for conformance with the design concept of the project and compliance with the information given in the Contract Documents. CONSULTANT shall take such with reasonable promptness so as to minimize delay. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or to a safety precautions and programs incident thereto. The approval of a specific item shall not indicate approval of an assembly of which the time is a component.
4. Prepare and deliver one (1) set of driveway plats to Project Manager for approval and furnish four (4) approved copies for CITY's Inspector, if required by Director pursuant to Article 5, section 5.5(B)(15) in the main body of this AGREEMENT.
5. Receive and review certificates of inspections, testing (to include Field, Laboratory, shop and Mill testing of materials), and approvals required by law, rules, regulations, ordinances, codes, orders, or the Contract Documents to determine generally that the results certified substantially comply

with the Contract Documents. CONSULTANT shall recommend to CITY special inspection or testing when deemed necessary to assure that materials, products, assemblages and equipment conform to the design concept and the Contract Documents.

6. Evaluate and determine the acceptability of substitute materials and equipment proposed by the Contractor(s).
7. Review monthly estimates and recommend approval or other appropriate action on estimates to the Contractor.
8. Observe the initial startup of the Project and the necessary performance tests required by the specifications of any machinery or equipment installed in and made a part of the Project. CONSULTANT shall advise CITY if in CONSULTANT's opinion the machinery or equipment is not operating properly and make recommendations for corrections of perceived problems.
9. Perform in company with CITY representative(s) a "conditional approval" and a "final" inspection of the project to observe any apparent defects in the completed construction with regard to conformance with design concept and intent of the Contract Documents. Assist CITY in consultation and discussions with Contractor(s) concerning such deficiencies, and make recommendation as to replacement or correction of the defective work.
10. After completion of the work, and before final payment to the Contractor, CITY shall require a set of "Record Drawings" from the Contractor, who has control of the work and who is in a position to know how the project was constructed. CONSULTANT, after receiving the record drawings, shall transfer the information to a set of "Mylar" tracings as "Record Drawings" or documents for the CITY's permanent file. CONSULTANT shall also provide electronic files of "Record Drawings" to the CITY.
11. CITY shall require the Contractor to submit to CONSULTANT, who shall review and deliver to CITY, manufacturer's warranties or bonds on materials and equipment incorporated in the project of which such warranties or bonds were required by the specifications.
12. Develop, at the request of CITY, any changes, alterations or modifications to the Project, which appear to be advisable and feasible, and in the best interest of CITY. CONSULTANT shall be cognizant that any such change may affect one or more of the various utilities and every effort shall be made to avoid creating a conflict because of the change. Such alterations shall appear on or be attached to CITY's form "Field Alteration Request." A supply of these forms will be furnished to CONSULTANT by CITY for this purpose. At the direction of CITY's Inspector, CONSULTANT shall obtain the Contractor's price of the proposed alteration prior to submitting it to CITY for its approval. No work shall be authorized to be done by the Contractor prior to receipt of CITY's approval of the "Field Alteration Request."

(Payment for the design phase services will be in accordance with Section V of the Contract.)

ATTACHMENT B

CONSULTANT'S FEE PROPOSAL

AND

SBEDA PARTICIPATION STATEMENT FROM CONSULTANT'S

INTEREST STATEMENT

ATTACHMENT II

CITY OF SAN ANTONIO

Request for Ordinance / Resolution Fiscal Impact

SAP FINANCIAL IMPACT

Project Name: PROGRAM MANAGEMENT SERVICES
 Project Fund #: VARIOUS (SEE ATTACHED LIST)
 Council Date: 5/11/2006
 Council Item #:

REVENUE TRANSFERS OUT

FUND NO. OR INTERNAL ORDER NO.	FUND NAME OR INTERNAL ORDER NAME	G/L	G/L NAME	CURRENT PLAN VERSION 0 (Optional)	PLAN VERSION 0 REVISION/ Appropriation	REVISED PLAN VERSION 0 (Optional)
	HUD 108 Loan Program			\$0.00	\$4,881,052.00	\$4,881,052.00
				\$0.00		\$0.00
				\$0.00		\$0.00
			TOTALS	\$0.00	\$4,881,052.00	\$4,881,052.00

REVENUE TRANSFERS IN (Optional)

WBS NO.	WBS NAME	G/L	G/L NAME	CURRENT PLAN VERSION 0 (Optional)	PLAN VERSION 0 REVISION (Optional)	REVISED PLAN VERSION 0 (Optional)
			TOTALS	\$0.00	\$0.00	\$0.00

EXPENDITURES

WBS NO.	WBS NAME	G/L	G/L NAME	CURRENT PLAN VERSION 0 (Optional)	PLAN VERSION 0 REVISION/ Appropriation	REVISED PLAN VERSION 0 (Optional)
	See attached List			\$0.00	\$4,881,052.00	\$4,881,052.00
				\$0.00		\$0.00
				\$0.00		\$0.00
				\$0.00		\$0.00
			TOTALS	\$0.00	\$4,881,052.00	\$4,881,052.00

Comments: This is a one time capital improvement expenditure. Funds in the amount of \$4,881,052.00 are included in the FY06-FY11 Capital Improvement Program Budget. Funds are available from Housing and Urban Development 108 Loan Program funds. This item is within budget.

Prepared by: Carlos S.
Castaneda

Dept: Public
Works

Ext.
8065

Date prepared: 3-29-06

Submitted Date:

Date received by Finance:

Finance updated by:

Date submitted back to Dept:

Agenda item #12

**CITY OF SAN ANTONIO
PUBLIC WORKS DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Sheryl Sculley, City Manager
FROM: Thomas G. Wendorf, P.E., Director of Public Works
SUBJECT: Professional Program Management Services for the Housing and Urban Development (HUD) 108 Loan Program Projects
DATE: June 8, 2006

SUMMARY AND RECOMMENDATIONS

An ordinance authorizing the negotiation and execution of a professional services agreement for an amount not to exceed \$4,814,685.00 with Post, Buckley, Schuh and Jernigan, Inc. (PBS&J), for professional program management services, design services, pavement engineering and scoping and estimating services. This ordinance appropriates funds in the amount of \$4,814,685.00 for program management services and design services to be provided by PBS&J and \$66,367.00 for Public Works Capital Administrative Costs, for a total ordinance amount of \$4,881,052.00 in connection with the Housing and Urban Development (HUD) 108 Loan Program projects.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

On November 17, 2005, and February 9, 2005 the Public Works Department presented to City Council the need for professional program management services to assist the department in the timely completion of the numerous capital improvements projects that were coming to fruition due to additional funding received. Recognizing that this need existed, City Council authorized the utilization of professional Program Management services by CH2M HILL, Inc. to assist the Public Works Department in the management and administration of the 2005 Storm Water Revenue Bond funded projects and the Local Agency Management (LAM) program and Lockwood, Andrews & Newnam, Inc. (LAN) for professional program management services to assist in the administration of the Advanced Transportation District (ATD) projects.

This ordinance authorizes the City Manager or her designee to negotiate and execute a professional services agreement with PBS&J for an amount not to exceed \$4,814,685.00 over a five year period. The scope of services to be performed by PBS&J includes, but is not limited to, program management and administration, design firm management, design quality assurance and quality control review and coordination, bidding services and construction oversight. PBS&J will be managing 26 HUD 108 streets and drainage projects which have a total budget of \$29,786,648.

On April 19, 2005 the City released a Request for Qualifications from firms desiring to provide program management services, which was posted on the City's website. A total of thirteen (13) interest statements were received. City staff rated all firms, giving consideration to qualifications, program management experience, quality of service and previous project performance. Of the thirteen firms, the following seven were selected for further evaluation through an interview process:

Carter Burgess	Lockwood, Andrew and Newnam, Inc. (LAN)
CH2M HILL, Inc.	Post, Buckley, Schuh & Jernigan (PBS&J)
Claunch and Miller, Inc.	Sunland Group
Freese and Nichols, Inc.	

Following the interviews of these seven firms, the Public Works Architectural and Engineering (A/E) Selection Committee met and discussed the statements of qualifications, as well as their evaluations for each of the submitting firms. After careful consideration, PBS&J was selected as one of the top ranked firms, to provide program management services and determined to be the most qualified to assist with the HUD 108 Loan funded projects. The Statement of Interest Review Summary is included herein as Attachment 1. PBS&J currently has two (2) projects with the City for a total fee of \$699,000.00 and an Indefinite Delivery contract in an amount not to exceed \$500,000.00.

POLICY ANALYSIS

Approval of this ordinance will be a continuation of City Council policy to complete previously approved Capital Improvement Projects. The utilization of outside consultants is consistent with the City's policy of enlisting outside management services from time to time to assist in completing capital projects.

FISCAL IMPACT

The proposal submitted by PBS&J represents an estimate of the work to be performed. All services rendered will be compensated based on an hourly fee as services are requested by the City.

Funds in the amount of \$4,881,052.00 are included in the FY 2006-2011 Capital Improvements Budget in the HUD 108 project budgets. These funds are to be appropriated and authorized payable as follows:

\$3,318,417.00	payable to PBS&J for design services in connection with the HUD 108 Program
\$1,496,268.00	payable to PBS&J for program management services in connection with the HUD 108 Program
\$ 66,367.00	for Public Works Capital Administrative Charges

COORDINATION

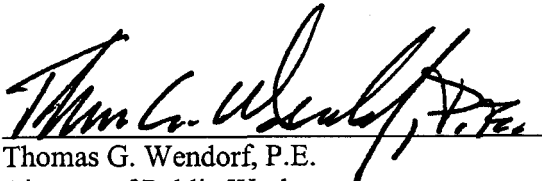
This request for ordinance has been coordinated with the City Attorney's Office, the Office of Management and Budget, the Human Resources Department, the Contract Services Department and the Finance Department.

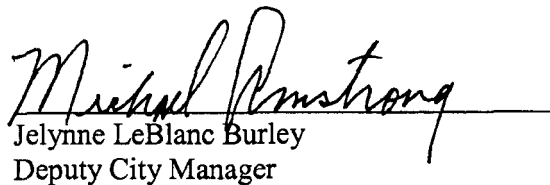
SUPPLEMENTARY COMMENTS

The Discretionary Contracts Disclosure Form required by the Ethics Ordinance is included herein as attachment 2.

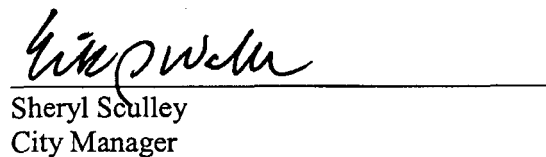
ATTACHMENTS

1. Statement of Interest Review Summary
2. Discretionary Contracts Disclosure Form


Thomas G. Wendorf, P.E.
Director of Public Works


Jelynn LeBlanc Burley
Deputy City Manager

Approved for Council Consideration:


Sheryl Sculley
City Manager

**CITY OF SAN ANTONIO - ARCHITECT/ENGINEER REVIEW COMMITTEE
STATEMENTS OF INTEREST REVIEW SUMMARY
PROJECT MANAGEMENT**

	EVALUATOR'S SCORE						SBEDA				TOTAL POINTS (Out of 100)	RANKING
	Rater 1	Rater 2	Rater 3	Rater 4	Rater 5	Rater 6	SUBTOTAL	Locally Headquartered Business Enterprise	Historically Underutilized Enterprise (HUE)	Small Business Economic Development Advocacy Policy Compliance (SBEDA)		
Architect/Engineer Candidates												
CH2M Hill	70.0	65.0	76.0	77.0	80.0	76.0	444.0	6.00	2.50	5.00	87.50	1
Post, Buckley, Schuh & Jernigan dba PBS & J	72.0	76.0	74.0	72.0	72.0	74.0	440.0	6.00	2.50	5.00	86.83	2
Lockwood, Andrew & Newnam, Inc.	71.0	72.0	72.0	74.0	76.0	75.0	440.0	6.00	1.65	3.00	83.98	3
Sunland Group	54.0	48.0	65.0	62.0	60.0	48.0	337.0	10.00	5.00	5.00	76.17	4
Claunch & Miller, Inc.	69.0	58.0	67.0	70.0	65.0	58.0	387.0	3.20	2.50	5.00	75.20	5
Carter Burgess	58.0	55.0	68.0	66.0	68.0	56.0	371.0	6.00	2.30	4.00	74.13	6
TCB/AECOM	61.0	68.0	55.0	62.0	60.0	46.0	352.0	6.00	2.50	5.00	72.17	7
Freese and Nichols, Inc.	66.0	48.0	60.0	69.0	62.0	55.0	360.0	6.00	2.00	4.00	72.00	8
Pape-Dawson Engineers, Inc.	62.0	46.0	50.0	62.0	49.0	55.0	324.0	10.00	1.95	3.00	68.95	9
Vickrey & Associates, Inc.	37.0	40.0	39.0	56.0	48.0	44.0	264.0	10.00	5.00	5.00	64.00	10
S & B Infrastructure, LTD	40.0	50.0	35.0	57.0	56.0	38.0	276.0	6.00	2.61	5.00	59.61	11
AG/CM, Inc.	30.0	29.0	42.0	50.0	40.0	42.0	233.0	5.00	2.50	5.00	51.33	12
All Points Inspection	14.0	16.0	29.0	40.0	16.0	20.0	135.0	0.00	5.00	5.00	32.50	13

NOTE: This form is a local government record and shall be retained in accordance with the provisions of the Local Government Code, Section 201. Evaluators must complete and sign this form, then submit to the Public Works Department/ Contract Services Office for retention.

CITY OF SAN ANTONIO
Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

N/A

and /or

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

PBS&J

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

LNV, Inc. dba LNV Engineering; Pape-Dawson Engineers, Inc.; Bain Medina Bain, Inc.; Ximenes & Associates, Inc.; Foster CM Group

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

N/A

(3) the identity of any **lobbyist** or **public relations firm** employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

CITY OF SAN ANTONIO
Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

Political Contributions

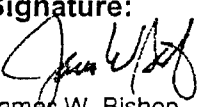
Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current or former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made	To Whom Made	Amount	Date of Contribution
John L. German, P.E.	Mayor Ed Garza	\$150	05/03
John L. German, P.E.	Councilmember Patti Radle	\$75	05/03
John L. German, P.E.	Councilmember Patti Radle	\$90	02/04
John L. German, P.E.	Councilmember Joel Williams	\$75	05/03
John L. German, P.E.	Councilmember Joel Williams	\$75	07/04
John L. German, P.E.	Councilmember Chip Haass	\$75	05/03
John L. German, P.E.	Councilmember Chip Haass	\$75	08/04
John L. German, P.E.	Councilmember Roger Flores, Jr.	\$75	05/03
John L. German, P.E.	Councilmember Roger Flores, Jr.	\$75	08/04
John L. German, P.E.	Councilmember Roger Flores, Jr.	\$75	10/04
John L. German, P.E.	Councilmember Art Hall	\$200	05/05
John L. German, P.E.	Councilmember Elect Kevin Wolff	\$200	04/05

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:  James W. Bishop	Title: Executive Vice President, Regional Director Company: PBS&J	Date: May 19, 2005
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² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

City of San Antonio
Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

Post, Buckley, Schuh, and Jernigan, Inc.

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☒ **No partner, parent or subsidiary; or**

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☐ **No subcontractor(s); or**

List subcontractors: Pape Dawson Engineers; LNV Engineering; Bain Medina Bain; HVJ, Inc.; Foster Group; Ximenes and Associates

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ **No lobbyist or public relations firm employed; or**

List lobbyists or public relations firms:

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

City of San Antonio

Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

☐ No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
John L. German	Councilmember Roger Flores, Jr.	\$75	08/04
John L. German	Councilmember Roger Flores, Jr.	\$75	10/04
John L. German	Councilmember Art Hall	\$200	05/05
John L. German	Councilmember Kevin Wolff	\$200	04/05
John L. German	Councilmember Roland Gutierrez	\$100	10/05
John L. German	Councilmember Richard Perez	\$125	11/05
John L. German	Councilmember Kevin Wolff	\$100	3/06
John L. German	Councilmember Art Hall	\$100	3/06
Larry Keith Pyron	Councilmember Kevin Wolff	\$100	3/06

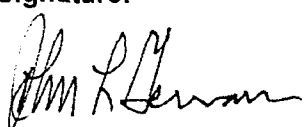
(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

☒ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:  John L. German, P.E.	Title: Vice President/ District Director Company or D/B/A: Post, Buckley, Schuh, and Jernigan, Inc., DBA PBS&J	Date: March 23, 2006
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² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.